

**REMARKS*****Election/Restriction Response***

Applicant acknowledges the Examiner's classification of the claims and species and that claims 1-6, 10-14, 17, 21-22 and 25 remain pending.

***Drawings***

Claim 14 has been amended and now clearly recites that the brace is an element of the mounting member. Applicant asserts that the drawings as filed include the brace recited in the amended claim. The brace is shown, for example, as element 212 in Figure 10. Applicant respectfully requests that the Examiner withdraw the objection to the drawing.

***Specification Objections***

The Examiner has objected to the specification for failing to provide proper antecedent basis for the subject matter of claim 14. As note above, claim 14 has been amended and now clearly recites that the brace is an element of the mounting member. As provided on page 20 lines 15-16 of the specification: "[t]he mounting member 202 includes a shaft 206, a left side plate 208, a right side plate 210 and a brace 212". Applicant asserts that the specification as written provides proper support for claim 14 as amended. Therefore, Applicant requests that the objection to the specification be withdrawn.

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### *Claim Objections*

Claim 3 was objected to by the Examiner as being of improper dependent form.

Applicant asserts that claims 1 and 3 have been amended to more clearly define the invention and to clarify the further limitation provided by dependent claim 3. Claim 1 as amended provides that the stepping member is positioned "vertically higher" than the bumper of the vehicle and claim 3 provides that "at least a portion of the stepping member extends forward of at least a portion of the bumper". Applicant notes that the "vertically higher" than limitation of claim 1 relates to the vertical distance between the bumper and the stepping member. In contrast, the "forward of" limitation of claim 3 relates to the relative rearward/forward position of the stepping member, i.e. distance of the stepping member behind the vehicle. By requiring the stepping member to extend above the bumper, a greater clearance is provided behind the vehicle to which the step is mounted. Applicant asserts, therefore, the claim 3 provides further limitation to claim 1 and requests that the Examiner's objection to claim 3 be withdrawn.

### *Claim Rejections 35 U.S.C. §112, 2<sup>nd</sup> Paragraph*

Claims 3 and 14 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

Claim 3 has been amended and now recites the condition of the step being in a "generally vertical position". Applicant, therefore, request that the objection with respect to claim 3 be withdrawn.

As noted above, claim 14 has been amended to identify the brace as an element of the mounting member. Applicant, therefore, requests that the objection with respect to claim 14 be withdrawn.

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*Claim Rejections 35 U.S.C. §103*

Claims 1-3, 12-13, 17 and 21 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,685,204 to Hehr.

Claim 1 as amended recites:

A step assembly for attachment to a trailer hitch receiver of a vehicle including a bumper, the step assembly comprising: a mounting member . . . , a step pivotally attached to said mounting member, said step including a support member having front and rear ends, a stepping member mounted proximate said rear end of said support member, wherein said stepping member and said support member are placed in a generally vertical position when said step is not in use and said stepping member is positioned vertically higher than the bumper of the vehicle . . .

Claim 21 as amended recites:

A step assembly for attachment to a trailer hitch receiver of a vehicle including a bumper, the step assembly comprising: . . . a step including a stepping member . . . wherein when said step is not in use, said stepping member is in a generally vertical position and at least a portion of said stepping member is positioned vertically higher than a portion of the bumper of the vehicle . . .

Hehr discloses a step assembly for a pickup truck having a trailer hitch receiver. As shown in Figure 1, the step assembly includes a stationary support 12 and a telescoping step section 14. As described at column 5, lines 19-58:

the stationary support section 12 includes an upper horizontally extending support member 20 that is dimensioned to be inserted in a conventional receiver hitch. . . the support section 12 further includes a bracket member 24 . . . and includes a horizontally extending passage that is defined by a rearward guide opening 30 and a forward guide opening 32. . . the forward guide and rearward guide openings 30, 32 receive the lower support member 40 of the assembly for sliding movement therethrough. . . . A pivotable step member 42 is mounted to the rearward end of the elongate lower support member.

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The Examiner finds that the stepping member of Hehr does not disclose a stepping member which is positioned higher than the bumper as required by claim 1 and amended claim 21. The Examiner finds, however, that it would have been obvious to modify Hehr to increase the size of the stepping member in order to "provide a step having a larger top surface to be sized to support both a user and any bulk material being loaded/unloaded thereby to reduce the vertical distance the user would have to lift the materials . . ."

Applicant submits that the size of the stepping member does not effect the vertical distance a user must lift materials. Rather, the vertical distance which the user lifts materials is dependent upon the height at which the step is positioned when in the horizontal orientation. Next, Applicant submits, that it would not have been obvious to increase the size of the stepping member 42 of Hehr. If one were to simply increase the size of the stepping member 42 of Hehr as suggested by the Examiner, the stepping member would obstruct the view of a license plate mounted on the rear of the vehicle. As noted on pages 32-33 of Applicant's specification, it is desirable to provide visibility to a license plate mounted at the rear of a vehicle. As provided in amended claim 1, the stepping member is mounted proximate the rear end of a support member. Thus, Applicant's invention provides for a step assembly which extends beyond the tailgate when in a horizontal position but does not obstruct the license plate when in the vertical position.

Finally, Applicant submits that the modification to Hehr suggested by the Examiner is not obvious because Hehr teaches away from such modification. At column 7, lines 1-7 Hehr provides:

Access to the bumper is unobstructed in the event that the operator

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wishes to step onto it in a conventional fashion without the assistance of the assembly 10. Moreover, the upturned, vertical surface of the step member 42 covers the rear of the hitch and the step assembly so as to present a neat appearance, and the surface of the step member can also be used to display a logo or ornamental pattern.

Therefore, Hehr does not disclose or render obvious a step assembly including a stepping member positioned vertically higher than the bumper of the vehicle as provided in claims 1 and 21. In addition, Hehr does not disclose or render obvious a step assembly having a support member to which the stepping member is mounted and which is moved from horizontal to a vertical position as required by claim 1.

Independent Claim 21 as amended also recites:

A step assembly. . . comprising: . . . a pivoting axis extending through said mounting member for providing pivotal engagement between said mounting member and said step, wherein said pivoting axis is provided at a fixed position relative to the trailer hitch receiver . . .

As described at column 5 lines 56-63 of Hehr:

A pivotable step member 42 is mounted to the rearward end of the elongate lower support member. Accordingly, the longitudinal position of the step member 42 is selectively adjustable relative to the upper support member and the receiver in which it is mounted, by sliding the lower support member 40 rearwardly or forwardly through the guides in the lower portion of the stationary support section.

Thus, in order to provide a step which is usable when the tailgate is lowered, the support member 40 must be slid rearwardly to bring the stepping member 42 beyond the tailgate 58 as shown in

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Figure 5 of Hehr. Likewise, in order to stow the stepping member 42, the support member 40 must be slid in the forward direction as shown in Figure 4. Thus, Hehr does not disclose a step assembly in which the pivoting axis is provided at a fixed position. Therefore, claim 21 as amended is not anticipated by Hehr. Furthermore, it would not be obvious to modify Hehr to provide a fixed pivoting axis because such modification would result in a step which could not be used when the tailgate is opened. Therefore claim 21 is not rendered obvious by Hehr.

Thus, for at least the reasons stated, Applicant asserts that it would not have been obvious to modify the step assembly as taught by Hehr to provide Applicant's invention as claimed in claims 1 and 21. Applicant, therefore, requests that the Examiner's rejection of claims 1 and 21 be withdrawn.

Claim 2 depends from claim 1. Applicant asserts that because claim 1 is allowable claim 2 is also allowable.

Claim 3 depends from claim 1. Applicant asserts that because claim 1 is allowable, claim 3 is also allowable. Claim 3 as amended further provides that the stepping member extends forward of at least a portion of the bumper. With respect to claim 3, the Examiner notes that Figure 5 of Hehr discloses a stepping member which extends above at least a portion of the bumper of the vehicle. Applicant asserts, however, that Figure 5 of Hehr does not provide that the stepping member 42 is positioned above the bumper 54. Rather, as clearly shown in Figures 2 and 3, when the stepping member 42 is in the vertical position, the entire stepping member is positioned lower than the bumper 54. Therefore, in addition to the fact that Hehr does not disclose a stepping member which is higher than the bumper, Hehr also fails to disclose a

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stepping member which is positioned forward of at least a portion of the bumper as required by amended claim 3.

Claim 12 depends from claim 1. Applicant asserts that because claim 1 is allowable claim 12 is also allowable. In addition, claim 12 further requires that the step includes an anti-rack bumper. As provided on page 17 of Applicant's specification:

The anti-racking bumpers 108, 124 contact the bumper 6 of the vehicle and are slightly compressed. The anti-racking bumpers 108, 124 serve to dampen road vibrations and to remove any play between the step assembly 10 and the vehicle 12.

The Examiner indicates that item 92 of Hehr is equivalent to Applicant's anti-rack bumper. Applicant asserts however, the item 92 is not an anti-rack bumper. As described at column 8, lines 50-54: "the depending flange portion 92. . . covers and bears against substantially the entire end of the support when in the deployed position." The Examiner refers to Figure 14, noting that the flange 92 prevents the step member 42 from pivoting past vertical. Although the flange 92 may prevent the stepping member from pivoting past vertical, it does not prevent members 40 and 42 from rattling against each other as the vehicle is traveling down the road. Applicant asserts therefore that Hehr does not disclose or render obvious claim 12.

Claims 4-6 and 13 depend from claim 1. Applicant asserts that because claim 1 is allowable, claims 4-6 and 13 are also allowable. Applicant requests reconsideration and allowance of claims 4-6 and 13.

Independent claim 17 as amended provides:

. . .when said step is not in use, said stepping member is pivoted to a generally vertical position and at least a portion of said stepping

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member is positioned forward of at least a portion of the bumper . .

Applicant asserts that it would not have been obvious to modify to the step assembly of Hehr to provide a stepping member 42 which extends forward of at least a portion of the bumper of the vehicle. In order for the stepping member to be positioned forward of at least a portion of the bumper, it must extend higher than the bumper. Because it would not have been obvious to modify the stepping member of Hehr to extend higher than the bumper of the vehicle, it also would not have been obvious to modify the stepping member of Hehr to extend forward of at least a portion of the bumper of the vehicle as required by claim 17. Thus, amended claim 17 is not rendered obvious by the teaching of Hehr. Applicant requests that the Examiners rejection of claim 17 be withdrawn.

Claims 14 and 25 were rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Hehr in view of United States Patent No. 6,623,025 to McCoy.

Initially, Applicant notes that claim 14 depends from claim 1 and claim 25 depends from claim 21. Applicant asserts that because claims 1 and 21 are allowable, claims 14 and 25 are also allowable.

Applicant further notes that McCoy discloses a trailer hitch assembly and a hitch ball carried on a hitch bar. Although the Examiner asserts that it would be obvious to modify the step assembly of Hehr to include a ball assembly in accordance with the teachings of McCoy, Applicant asserts that such modification would not be obvious. Applicant first notes that the upper support member 20 of Hehr is positioned within the trailer hitch receiver of the vehicle.

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Thus, with the step assembly of Hehr mounted to the vehicle, the trailer hitch receiver is no longer accessible as shown in Figures 2-9 and therefore a ball assembly as taught by McCoy could not be mounted thereto. Furthermore, if such ball assembly were mounted to the trailer hitch receiver of Hehr, the stepping member 42 would be prevented from moving to its fully retractable position as shown in Figure 4. Thus, despite the Examiner conclusion, it would not be obvious to modify the mounting member of Hehr to include the ball assembly taught by McCoy. Applicant asserts that claims 14 and 25 are not rendered obvious by the references cited and respectfully requests reconsideration and allowance of claims 14 and 25.

***Allowable Subject Matter***

Applicant thanks the Examiner for his indication of allowance of claims 10, 11 and 22.

Applicant, by the amendments presented above, has made a concerted effort to present claims which clearly define over the prior art of record, and thus to place this case in condition for allowance.

Should the present claims not be deemed adequate to effectively define the patentable subject matter, the Examiner is respectfully urged to call the undersigned attorney of record to

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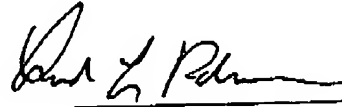
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discuss the claims in an effort to reach an agreement toward allowance of the present application.

Respectfully submitted,

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By: \_\_\_\_\_



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